UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

STEVE WEINBERG,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 3:06-CV-2332-B**
	§	**ECF**
NATIONAL FOOTBALL LEAGUE	§	
PLAYERS ASSOCIATION, et al.,	§	
	§	
Defendant.	§	

MEMORANDUM ORDER

Before the Court is the Motion to Compel Arbitration and to Dismiss the Petition (doc. 13) filed by Defendants National Football League Players Association ("NFLPA"), Richard Berthelsen, Gene Upshaw, Tom DePaso, Trace Armstrong, John Collins, Keith Washington, and Mark Levin on January 9, 2007. On June 14, 2007, the Court held a hearing on the motion, heard oral arguments by the parties, and GRANTED Defendants' motion. At the close of the hearing, the Court briefly articulated its reasons for granting the motion to compel and indicated that a more detailed analysis would follow in writing. That analysis is provided below.

The Federal Arbitration Act favors arbitration and "establishes that, as a matter of federal law, any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983). The Fifth Circuit has instructed that "arbitration should not be denied 'unless it can be said with positive assurance that an arbitration clause is not susceptible of an interpretation which would cover the dispute at issue.'" *Neal v. Hardee's Food Sys., Inc.*, 918 F.2d 34, 37 (5th Cir. 1990) (quoting *Commerce Park at DFW Freeport v. Mardian Constr. Co.*, 729 F.2d 334, 338 (5th Cir. 1984)). The Fifth Circuit has also

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articulated a standard for determining whether parties must submit their dispute to arbitration:

> Courts conduct a two-step inquiry when deciding whether parties must submit to arbitration. The first step is to decide whether the parties agreed to arbitrate their dispute. "This determination involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." To resolve these issues, "courts generally . . . should apply ordinary state-law principles that govern the formation of contracts." Once a court determines that the parties agreed to arbitrate, the court must assess " 'whether legal constraints external to the parties' agreement foreclosed the arbitration of those claims.' "

OPE Int'l LP v. Chet Morrison Contractors, Inc., 258 F.3d 443, 445-46 (5th Cir. 2001) (citations omitted). The parties here do not dispute that Weinberg's Application for Certification as an NFLPA Contract Advisor, the NFLPA Regulations, and the Standard Representation Agreement constitute *valid* agreements to arbitrate. The question raised is one of scope. Thus, the Court will turn to the issue of whether these arbitration agreements contemplate the disputes at issue here.

First, as to Weinberg's claims against the NFLPA, the Court finds that these claims fall within the scope of the arbitration clause in Section 5 of the NFLPA Regulations. Specifically, the Regulations expressly call for arbitration to be the exclusive method for resolving any and all disputes that may arise from "[a]ny other activities of a Contract Advisor within the scope of these regulations." (App. to Mot. to Compel Arbitration ("App.") at 024) Weinberg's claims against the NFLPA stem from his alleged improper activities that were the subject of disciplinary action by the NFLPA pursuant to the Regulations. His claims therefore involve his activities as a contract advisor operating under the authority of the Regulations and thus are subject to arbitration.

Turning next to Weinberg's claims against fellow contract advisors Agnone and Shatsky, the Court finds that these claims are likewise subject to Section 5's arbitration clause. More to the point, the arbitration clause in Section 5 specifies arbitration as the exclusive method for resolving disputes between two or more contract advisors involving claims of interference with the contractual relationship between a contract advisor and a player. (*See id.*) Weinberg's claims against Agnone and Shatsky–grounded in his allegations that the two advised his former clients not to pay agent fees he claims he was owed under the players' contracts–is precisely the type of dispute contemplated by Section 5 and accordingly must be resolved by arbitration.

The individual NFLPA Defendants are also subject to the arbitration clause. As another court in this district has previously held: "Using tradition[al] principles of agency law, if a principal is bound under the terms of a valid arbitration clause, its agents, employees, and representatives are also covered by that agreement." *North River Ins. Co. v. Transamerica Occidental Life Ins. Co.*, 2002 WL 1315786, at *5 (N.D. Tex. 2002) (Lindsay, J.). Applying these principles here, the Court finds the individual NFLPA Defendants, Berthelsen, Upshaw, DePaso, Armstrong, Kaplan, Levin, and Collins as agents, employees, and/or representatives of the NFLPA are subject to the arbitration clauses at issue.

A separate basis for including the individual NFLPA Defendants in the arbitration process is the doctrine of equitable estoppel. The doctrine of equitable estoppel has been applied to allow nonsignatories to an arbitration agreement to compel arbitration and to prevent a signatory to the agreement from preventing arbitration of his claims against nonsignatories when those claims are closely related to the rights and obligations set forth in the signatory's arbitration agreement. The Fifth Circuit has adopted the Eleventh Circuit's test for the application of equitable estoppel in the arbitration context:

> Existing case law demonstrates that equitable estoppel allows a nonsignatory to compel arbitration in two different circumstances. *First, equitable estoppel applies when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory.* When each of a signatory's claims against a nonsignatory makes reference to or presumes the

> existence of the written agreement, the signatory's claims arise out of and relate directly to the written agreement, and arbitration is appropriate. *Second, application of equitable estoppel is warranted when the signatory to the contract containing an arbitration clause raises allegations of substantially interdependent and concerted misconduct by both the nonsignatory and one or more of the signatories to the contract. Otherwise the arbitration proceedings between the two signatories would be rendered meaningless and the federal policy in favor of arbitration effectively thwarted.*

Grigson v. Creative Artists Agency L.L.C., 210 F.3d 524, 527 (5th Cir. 2000) (emphasis in original) (citing *MS Dealer Serv. Corp. v. Franklin*, 177 F.3d 942, 947 (11th Cir. 1999)). Here, Weinberg asserts that the NFLPA, as signatory, and all of the nonsignatory individual Defendants acted together in a conspiracy to defraud, decertify, and tortiously interfere with the contracts and prospective business relations of Plaintiff. Because Weinberg's claims against those Defendants raise allegations of "substantially interdependent and concerted misconduct", the individual Defendants may compel Weinberg to submit his claims to arbitration pursuant to the doctrine of equitable estoppel.

As to the third and final consideration of the Fifth Circuit in deciding the arbitration issue–the existence of external legal constraints–the Court is unaware of and the parties have not identified any such constraints in this case.

For the reasons set forth above, the Court GRANTS Defendants' motion to compel arbitration of all of Weinberg's claims and orders the parties to arbitrate this matter in accordance with the NFLPA Regulations Governing Contract Advisors. Furthermore, because the Court has determined that all of the issues the parties have raised must be submitted to arbitration, it DISMISSES the case with prejudice. *See Alford v. Dean Witter Reynolds, Inc.*, 975 1161, 1164 (5th Cir. 1992).

SO ORDERED.

SIGNED June 19th , 2007.

JANE J. BOYLE
UNITED STATES DISTRICT JUDGE